



199 Water Street
New York, NY 10038
T (212) 577-3300
www.legal-aid.org
Direct Dial: (212) 577-3646
Direct Fax: (646) 616-4646
E-mail: SWJames@legal-aid.org

Richard J. Davis
Chairperson of the Board

Blaine (Fin) V. Fogg
President

Seymour W. James, Jr.
Attorney-in-Chief

Mr. Eliot Fishman
Director
Center for Medicaid and CHIP Services (CMCS)
Centers for Medicare & Medicaid Services
7300 Security Blvd, Mail Stop S2-01-16
Baltimore, Maryland 21244-1850

Re: Proposed 1115 Medicaid waiver authorizing federal
Medicaid funds for certain transitional services provided in the 30-day
period immediately prior to release for incarcerated individuals with
serious behavioral and physical health conditions

Dear Mr. Fishman:

The Legal Aid Society urges the Centers for Medicare & Medicaid Services (CMS) to approve New York State's proposed waiver authorizing federal Medicaid matching funds for certain transitional services provided in a 30-day period immediately prior to release to incarcerated persons with serious behavior and physical health conditions who are eligible for Health Homes under the Affordable Care Act Section 2703.

The Legal Aid Society is the nation's oldest and largest provider of legal services to low-income families and individuals. Our Prisoners' Rights Project (PRP) has addressed problems in the New York City jails and New York State prisons for more than 40 years. PRP has sought to improve jail conditions, including improved access to medical and mental health care, through advocacy with jail and prison officials on behalf of persons in custody, and through individual and class action lawsuits. The Society's Health Law Unit (HLU) provides direct legal services to low-income health care consumers and beneficiaries from all five boroughs of New York City, and technical advice to advocates throughout New York State. We also participate in statewide and federal advocacy efforts on a variety of health law and policy issues.

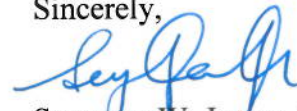
Each week PRP receives requests for assistance from incarcerated individuals with serious medical and mental health needs that are not being served, and who are not receiving the services necessary to successfully bridge the transition to the community upon discharge. HLU often assists individuals recently released from jail or prison who are having difficulty navigating New York's increasingly complex Medicaid program and accessing crucial services. We also receive calls from the Society's Criminal Defense Practice about clients at risk of becoming or remaining incarcerated because their access to substance abuse or mental health programs is threatened by Medicaid coverage problems.

Persons in jails and prisons suffer from some of the highest rates of disease¹ and are in need of substantial medical, mental health and substance abuse services. The waiver would enhance the array of services available to these persons before discharge, including treatment options, medication support and intensive care coordination with the goal of instituting a continuum of care. As a result, it would be a significant first step forward in providing a seamless transition to the community for some of the jail and prison population that is most at need. It would alleviate the disruptions in medical and mental health services upon release which lead to poor and costly health outcomes.² Moreover, a more efficient transition in the provision of services—such as the drug treatment services provided after the Rockefeller Drug Law reforms—has been shown to lead to a decrease in recidivism and a significantly more positive outcome.³

The widespread changes to New York's Medicaid program as a result of state Medicaid Redesign and the Affordable Care Act have created opportunities for better coordination of care for vulnerable individuals including those with serious mental illness and substance use disorders. However, these same developments can decrease access to needed services if they are not accompanied by policies that help people successfully transition into new and/or changed programs. For example, because of the recent and ongoing transition of Medicaid's behavioral health benefit into managed care, many individuals being released from jail and prison now and in the future must navigate a system vastly different than the one that existed before they were incarcerated.

We therefore urge that the waiver be granted so that persons in the New York State prisons and the New York City jails—particularly those with serious substance use disorder, mental health and physical needs—can better obtain the health services that they need to transition back to the community.

Sincerely,



Seymour W. James, Jr.
Attorney-in-Chief

¹ Statistics regarding the health needs of the criminal justice involved population underline the scope of the need for the proposed services. Justice-involved individuals are seven times more likely than the general population to experience mental illness, substance use disorders and other chronic conditions. National Institute of Corrections, "Solicitation for a Cooperative Agreement—Evaluating Early Access to Medicaid as a Reentry Strategy," Federal Register 76, no. 129 (2011): 39438 -39443.

² For example, there is a 12-fold rise in the risk of death in the first two weeks post-release. See Ingrid A. Binswanger, et al., "Release from Prison—A High Risk of Death for Former Inmates," *New England Journal of Medicine* 356, no. 2 (2007): 157–165.

³ Diversion to treatment following New York's Rockefeller Drug Law reforms in 2009, for example, was associated with an 18% drop in recidivism within two years of treatment and a 50% drop in re-arrests for violent crime. Jim Parsons et al., *End of an Era? Impact of Drug Law Reform in New York City*. New York: Vera Institute of Justice (2015). Or, for example, a study in California found that the state saved an estimated \$97 million by diverting 42,000 non-violent drug offenders to treatment in just one year. Anglin, M.D., et al. Offender diversion into substance use disorder treatment: the economic impact of California's Proposition 36. *American Journal of Public Health* 103(6):1096-1102 (2013).